

CHRISTOPHER NEWPORT UNIVERSITY
**INSTITUTIONAL COMPLIANCE
AND TITLE IX**

Discrimination and Harassment Informal and Formal Resolution

The Office of Institutional Compliance/Title IX (IC/TIX) oversees and coordinates the policy 1005 informal and formal resolution processes for reports of discrimination and/or harassment on the basis of protected characteristics or status in a fair and impartial manner with a presumption that no policy violation has occurred unless proven otherwise by a preponderance of the evidence as a result of a formal complaint investigation. Reports of discrimination and/or harassment on the basis of protected status involving employee respondents may be addressed by the Office of Human Resources using separate procedures.

- CNU may use external investigators, decision makers, appeal officers, and informal resolution facilitators to conduct the policy 1005 informal or formal resolution process.
- Individuals who need reasonable accommodations to access and participate in the programs and services of IC/TIX are encouraged to contact the office directly as soon as practicable. CNU students may instead contact the Office of Accessibility and Care Team Support (ACTS) for assistance with communicating the need for reasonable accommodations to IC/TIX. CNU employees may instead contact the Office of Human Resources for assistance.
- Appropriate, temporary interim measures are available for complainants and respondents involved in reports of policy 1005 discrimination and/or harassment after the receipt of a report and/or during the informal or formal resolution process. Implemented interim measures are reassessed on an ongoing basis and may be implemented as remedies at the conclusion of a process. Examples of reasonably available interim measures that may be available include, but are not limited to:
 - restrictions on contact between parties
 - temporary restrictions on students access to university programs and activities
 - temporary changes to work schedules, locations, or operational duties
 - administrative leave, with or without pay, for employees
- Every effort will be made to complete the informal or formal resolution process (excluding any appeals, pauses for exploration of informal resolution, federal and state holidays, and days CNU is not open for regular business operations) no later than 90 business days after written notice of allegation is issued to the parties. Parties will be informed in writing of any extensions of timeframe and the

rationale for such extensions. Additionally, parties may request an extension in writing by contacting IC/TIX. If an extension is granted it will be extended to both parties and parties will receive written notice of the extension.

- Meetings and interviews conducted by external investigators and informal resolution facilitators are generally conducted using video conferencing technology. Information generated during the informal or formal resolution process is shared with parties using a secure electronic platform.
- The complainant and respondent may have an advisor of choice with them for the informal or formal resolution process.
- Refer to policy 1005 for information on circumstances under which the university may direct IC/TIX to initiate the formal resolution process for a report.

Informal and Formal Resolution General Information

Role of the Advisor of Choice

An advisor of choice may be anyone a complainant or respondent chooses to accompany them through the formal resolution process or the informal resolution process and may be, but is not required to be, an attorney. Generally, a witness should not be an advisor of choice. The party must provide written permission to IC/TIX in order for their advisor of choice to be included in communication for the process and for the advisor to have access to materials generated during the selected process.

During the formal resolution process, or if selected, during the informal resolution process, an advisor of choice may speak directly with the party they are advising and may ask the investigator, IC/TIX, or, if applicable, informal resolution facilitator, clarifying questions about policy and procedure. However, an advisor of choice may not speak for the party they are advising.

Dismissal of Reports

Refer to policy 1005 for the circumstances under which a report may be dismissed. Dismissal of a report is final but nothing precludes a complainant from refiling a report if new information becomes available or there is information that was not considered for the dismissal process.

Withdrawing a Report

The complainant(s) may request to withdraw a report at any time prior to an outcome being reached in an informal or formal resolution process by notifying IC/TIX in writing. Withdrawal of a report generally results in dismissal of the report. Once a report is dismissed, it is closed and cannot be reopened for informal or formal resolution.

Informal Resolution

Informal Resolution General Information

Informal resolution may be the most efficient option for addressing allegations in a report of alleged discrimination and/or harassment based on protected characteristics or status and reaching an outcome. Pursuing informal resolution does not preclude initiation of the formal resolution process if attempts to resolve the matter through informal resolution fail. Complainants are not required to participate in informal resolution before requesting formal resolution.

Informal resolution is an alternative to the formal resolution process and involves addressing a report through the implementation of individual and/or community remedies designed to address the allegation(s) contained in a report and prevent future occurrences of harassment and/or discrimination. Remedies that are agreed to and/or imposed as a result of informal resolution are generally considered non-disciplinary in nature though the interventions may involve the respondent taking certain actions to repair harm. Informal resolution is considered voluntary and the university has no mechanism to compel individuals to participate in the process.

Evaluation of Suitability for Informal Resolution

Upon receipt of a report of alleged policy 1005 discrimination and/or harassment and as part of the initial review of the report, the IC/TIX will also consider whether informal resolution may be the most suitable means for addressing the concerns raised in the report. The evaluation will consist of reaching out to the named complainant to gauge the complainant's interest in pursuing informal resolution, collecting relevant information regarding the incident described, and consulting with applicable partners such as those in the Office of Human Resources, Academic Affairs, and Student Affairs.

Reasons the report may not be suitable for informal resolution include:

- Existence of previous reports involving the same respondent that were previously resolved using informal or formal resolution.
- Information in the report that suggests there may be an immediate risk to the physical health and safety of the complainant or others.
- Refusal by the complainant and respondent to participate in the informal resolution process.

Informal Resolution Options

The options for informal resolution are determined by the specific facts of the report as some reports may be more suitable for certain methods than others. Informal resolution remedies are meant to be adaptable to the needs of the parties involved as well as the circumstances of the report. Though informal resolution does not preclude individuals from pursuing formal resolution, if an outcome is reached through informal resolution the report will be considered resolved and closed. The most common forms of informal resolution that are offered and utilized are third-party facilitated conference, shuttle mediation, and implementation of interventions and remedies.

Third-Party Facilitated Conference

For this option, IC/TIX identifies a qualified internal or external professional to facilitate a conference between the parties for the purpose of reaching a mutually agreeable outcome. The facilitator will begin the process by contacting and meeting with each party separately to gauge their interest in participating in the process and to learn to what goals each party may have for the conference as well as what outcomes may be agreeable to each party. The third-party facilitated conference provides an intentional and structured opportunity for the parties involved to acknowledge the harm that was created, recognize needs that may be associated with the harm, and fulfill outcomes to address those needs. To participate in this option each party must provide their voluntary, written consent. Additionally, the parties must agree in advance to abide by any ground rules established for the process. If the parties reach and sign a formal written agreement through facilitation, the matter will be considered resolved and will no longer be eligible for the formal resolution process.

This option will be discontinued and the matter returned to the Office of Institutional Compliance/Title IX for consideration to use another informal resolution option or formal resolution if:

- Either party declines to participate.
- Either party voluntarily exits before a formal written agreement is signed.
- The facilitator deems the matter unsuitable for the informal resolution option selected.

Shuttle Mediation

This option is similar to the Third-Party Facilitated Conference option. However, the complainant and respondent never directly engage with one another. Instead, the assigned facilitator is responsible for shuttling or relaying information between parties in order to reach a mutual agreement regarding an outcome. If the parties reach and sign a formal written agreement through shuttle mediation, the matter will be considered resolved and it will no longer be eligible for the formal resolution process.

This option will be discontinued and the matter returned to the Office of Institutional Compliance/Title IX for consideration to use another informal resolution option or formal resolution if:

- Either party declines to participate.
- Either party voluntarily exits before a formal written agreement is signed.
- The facilitator deems the matter unsuitable for the informal resolution option selected.
-

Implementation of Interventions and Remedies

Informal resolution may involve the implementation of interventions and/or remedies including but not limited to the following: educational coaching conversations with the respondent, broad based education programming or training for relevant individuals to prevent future occurrences of harassment and/or discrimination; the provision of a

specific remedy to restore the complainant's equal access to the educational programs and activities or employment. Typically, the complainant will not be involved in the educational coaching session for the respondent and would not be expected to participate in the broad-based educational training or programming.

Failure to fulfill Obligations and Outcomes

If a party fails to complete the obligations that they are responsible for fulfilling as a result of an informal resolution process, IC/TIX may refer the party to the appropriate university authority for failure to comply. If the party is found responsible for failure to comply, then such a finding will be part of the party's disciplinary record.

Formal Resolution Process

Phase 1: Notice of Allegation and Evidence Collection

Notice of Allegation

If the formal resolution process will be used to determine an outcome of a report of alleged policy 1005 discrimination and/or harassment, IC/TIX will issue a written notice of allegation to parties. The notice of allegation contains information about the allegations that are the focus of the report, the policy and applicable policy definitions, the procedures to be used, information about resources and applicable interim measures, how to request reasonable accommodations, a statement that the presumption is that no policy violation has occurred unless proven otherwise by a preponderance of the evidence, a statement that retaliation is prohibited, information on how to contact IC/TIX, and information about applicable transcript notations for the respondent as laid out in policy 1005.

Evidence Collection

The assigned investigator is responsible for gathering information for the investigation, writing the investigation report, and weighing the relevant evidence and assessing credibility in order to determine by a preponderance of the evidence whether it is more likely than not that a violation of policy has occurred. Participation in the formal resolution investigation process is voluntary for the complainant, respondent, and witnesses. IC/TIX, as well as the assigned investigator, have no mechanism for compelling participation and submission of information by any participants.

Phase 2: Evidence Review and Response

All evidence collected during the information/evidence collection period will be made available to parties for review for a period of ten (10) business days via a secure electronic platform. The parties have until the conclusion of the ten (10) business day period to submit a written response to the evidence directly to the investigator. Upon receipt of timely responses, the investigator will determine whether evidence collection and review should continue or whether to proceed to writing the investigation report. If evidence collection and review will continue, the investigator will notify the parties of the

continuation. The investigator is not required to accept late evidence review written response submissions.

Phase 3: Draft Investigation Report Review and Response

Upon receipt of timely responses, the investigator will determine whether investigation activity should continue or if the draft investigation report can be finalized and shared with parties for ten (10) business days for review and response. The draft investigation report will contain a summary of the relevant evidence but will not contain a finding.

If investigation activity continues, the investigator will notify the parties of the continuation.

Phase 4: Final Investigation Report and Determination of Outcome

After receiving timely responses to the draft investigation report, the investigator will objectively and fairly weigh all evidence in order to determine, by a preponderance of the evidence, whether it is more likely than not that a violation of policy has occurred. Only if the determination is that a violation of policy has occurred, will the investigator impose sanctions and remedies. The investigator will determine the outcome in a fair, impartial, thorough, and efficient manner.

Once the investigator has reached a determination, the investigator will provide in writing to IC/TIX, the final investigation report detailing the determination, rationale, the evidence used in support of the determination, the evidence disregarded, credibility assessments, and any sanctions within ten (10) business days of the conclusion of finalizing the investigation report. The investigator may request an extension and the parties will be notified of the extension.

The Final Investigation Report Contains:

- A description of the alleged policy violation(s) and the policy(s) allegedly violated;
- Finding of each alleged policy violation and the findings of fact that support the determination(s);
- Conclusions regarding the application of the relevant policy to the facts at issue;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- Any sanctions issued that CNU is permitted to share according to state or federal law;
- Any remedies provided to the complainant designed to ensure access to CNU's educational or employment programs or activities to the extent CNU is permitted to share according to state or federal law;
- Information on when the determination of the investigator is considered final; and
- The procedure and permissible bases for any available appeal for either party.

Notice of Outcome

IC/TIX will provide the written notice of outcome to parties via email. The notice will include secure electronic access to the final investigation report, instructions for

submitting an appeal (including the deadline), and the date the decision maker's determination becomes final if no appeal is filed.

Sanctions and Remedies

Sanctions

Sanctions will only be imposed after a determination of responsibility and will depend on the facts and circumstances of each particular situation, the frequency and severity of the offense, and any history of past misconduct. Sanctions may include penalties up to and including dismissal for students and dismissal from employment for employees. Refer to policy 1005 for a full list of sanctions.

The Vice President of Student Affairs is responsible for determining appropriate sanctions for student respondents and providing the written rationale for any sanctions imposed. In determining the sanction, the Vice President of Student Affairs may elect to consult with the decision maker and/or IC/TIX.

The Provost is responsible for determining the appropriate sanctions for instructional and adjunct faculty respondents in the Division of Academic Affairs and writing the rationale for any sanctions imposed. In determining the sanction, the Provost may elect to consult with the decision maker and/or the Office of Human Resources.

Sanctions for AP faculty respondents and the written rationale for the sanctions, will be determined by the vice president of the division in which the AP faculty member respondent is employed. In determining the sanction, the vice president may elect to consult with the decision maker and/or the Office of Human Resources.

Sanctions for classified and wage staff respondents and the written rationale for the sanctions will be determined by the vice president of the division in which the classified or wage staff respondent is employed. In determining the sanction, the vice president may elect to consult with the decision maker and/or the Office of Human Resources.

IC/TIX and the Office of Human Resources, as applicable, will assist with overseeing the administration of sanctions.

Remedies

Remedies may be provided in addition to any sanctions as determined by the investigator that are designed to preserve or restore equal access to the university's education programs and activities, including employment, for the complainant. IC/TIX oversees effective implementation of remedies.

Appeals

Once the Notice of Outcome with access to the final investigation report has been provided, both parties have seven (7) business days from the date the notice is received into the party's email account to file an appeal.

An appeal of the determination of the decisionmaker is available only based on one or more of the following grounds:

- Procedural irregularity that affected the outcome of the matter; and/or
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and/or
- IC/TIX staff and/or investigator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A request for an appeal must be submitted in writing to IC/TIX by the deadline stated in the notice of outcome and must set forth the grounds upon which the appeal is based and the evidence supporting the appeal.

If a party files a timely appeal, IC/TIX will promptly notify the other party in writing and provide a copy of the appeal. The non-appealing party may, but is not required to, submit a written response regarding the appeal within five (5) business days from receipt of the copy of the appeal. At the expiration of the deadline for the non-appealing party's written response, IC/TIX will confirm that the appeal and written response, if any, is timely and shall forward it and any written response to the appeal officer within five (5) business days of receipt. If an extension beyond five (5) business days is necessary, all parties will be notified in writing of the expected time frame. The appeal officer is a trained and qualified individual who has not had any previous involvement with the investigation.

If adequate grounds for appeal have been stated, the appeal officer will consider the merits of the appeal. In considering the merits of the appeal, the appeal officer may review any pertinent materials in the record and meet with the parties and witnesses as needed (meetings may be conducted over the phone or using video conferencing technology). Any information included in the appeal that does not support one of the permissible grounds for appeal shall not be considered in the appeal process.

The decision of the appeal officer is final. The decision and the rationale for the decision will be provided in writing to IC/TIX who will then make it available to both parties via a secure electronic platform within five (5) business days of having received the decision from the appeal officer.